

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

FALASHA ALI,

Defendant.

Case No.: 2:06-cr-00160-RLH-RJJ

ORDER

(Motion to Set Aside Court's
Order/Judgment of (October 6, 2008)
Pursuant to 60(b)(6) Motion Based on New
Intervening Change of Law and Newly
Discovered Evidence – # 119)

Before the Court is Defendant Falasha Ali's **Motion to Set Aside Court's Order/Judgment of (October 6, 2008) Pursuant to 60(b)(6) Motion Based on New Intervening Change of Law and Newly Discovered Evidence** (#119, filed Mar. 18, 2013). The Court has also considered Defendant's Supplement (#121, filed May 17, 2013), the Government's Opposition (#122, filed June 11, 2013), and Defendant's Reply (#123, filed June 27, 2013). For the reasons discussed below, the Court denies Defendant's Motion.

BACKGROUND

The facts of this case are more particularly set out in the Court's prior Order (#106, filed Nov. 17, 2010) denying Defendant's § 2255 Motion (#95, filed June 2, 2010), and the Court only provides a brief recitation of those facts here.

1 Defendant was originally charged with one count of armed bank robbery and one
2 count of use of a firearm in a crime of violence. Pursuant to an unopposed stipulation, the
3 Defendant underwent a psychiatric evaluation. The psychiatric report noted that there was
4 evidence that Defendant was mentally ill, however, those involved in the review determined the
5 Defendant understood the proceedings and their potential consequences, would be able to assist his
6 attorney, and could rationally weigh the evidence and determine whether or not to accept a plea
7 agreement.

8 After several continuances, the Government learned that Defendant was connected
9 with several other bank robberies and Defendant negotiated a plea agreement. On May 28, 2008,
10 pursuant to the agreement, Defendant pled guilty to one count of bank robbery, three counts of
11 armed bank robbery, and one count of use of a firearm during a crime of violence. Defendant also
12 admitted to underlying facts of other crimes not officially charged. As part of the agreement,
13 Defendant agreed to waive his right to appeal except with respect to any portion of the sentence
14 that was an upward departure from the range agreed to by the parties. The Court found Defendant
15 competent to enter the plea. Defendant was later sentenced to 224 months incarceration.

16 Defendant then filed an appeal, which was subsequently dismissed due to the
17 appeal waiver provision of the plea agreement. After that unsuccessful appeal, Defendant filed a §
18 2255 motion arguing ineffective assistance of counsel and asserting that he was incompetent to
19 enter into the plea agreement. The motion also included several other substantive arguments not
20 raised on direct appeal due to Defendant's waiver. In denying the motion, the Court addressed
21 Defendant's contention that he was not competent to accept the plea agreement and found it
22 without merit because Defendant's arguments were contradicted by the psychiatric evaluation
23 report and Defendant's own conduct during the proceedings. The Court also held that many of
24 Defendant's substantive arguments were procedurally defaulted and that Defendant's ineffective
25 assistance of counsel claim was meritless under *Strickland*.
26

1 Defendant now brings the instant Motion under Fed. R. Civ. P. 60(b), arguing that
2 an intervening change in law and newly discovered evidence justify the Court's reconsideration of
3 its Order denying Defendant's § 2255 Motion.

4 DISCUSSION

5 Under Rule 60(b), a court may relieve a party from a final judgment, order or
6 proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or excusable
7 neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has
8 been satisfied; or (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*, 243
9 F.3d 549, 549 (9th Cir. 2000). "Relief under Rule 60(b)(6) must be requested within a reasonable
10 time, and is available only under extraordinary circumstances." *Twentieth Century-Fox Film Corp.*
11 *v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981) (internal citations omitted). A denial of a rule
12 60(b) motion is reviewed for an abuse of discretion. *See De Saracho v. Custom Food Mach., Inc.*,
13 206 F.3d 874, 880 (9th Cir. 2000).

15 The majority of Defendant's arguments in the instant Motion are repetitive of those
16 previously raised, addressed, and dismissed by the Court. Consequently, the Court will not
17 address those arguments here. Defendant does, however, contend that the Ninth Circuit's recent
18 decision in *United States v. Dreyer*, 705 F.3d 951 (9th Cir. 2013) constitutes an intervening change
19 in law and the New Mexico district court's 1997 determination that Defendant was not competent
20 to stand trial is newly discovered evidence. Thus, Defendant argues, he is entitled to relief under
21 Rule 60(b). However, the Court finds that neither *Dreyer* nor the incompetency ruling meets the
22 standard of Rule 60(b).

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1 First, Defendant's reliance on *Dreyer*¹ is misplaced. Under *Dreyer*, when a
2 competency determination is challenged, "the record is reviewed to see if the evidence of
3 incompetence was such that a reasonable judge would be expected to experience a genuine doubt
4 respecting the defendant's competence." 705 F.3d at 960. The Court's prior Order complied with
5 that standard. Defense counsel requested and the Court granted a psychiatric evaluation. The
6 Court relied on the expert opinions expressed in the resulting report in determining that Defendant
7 was competent. The Court also noted that there was no indication that Defendant's mental status
8 had changed or that he had gone off his medication between the time the evaluation took place and
9 the change of plea hearing. These facts are in stark contrast to those in *Dreyer*, where no
10 psychiatric evaluation was ordered and expert reports supported the defendant's counsel's
11 representations that the defendant was unable to assist in his defense due to his medical condition.
12 *Id.* at 965. Thus, although the Defendant, as previously noted, has significant mental issues, the
13 evidence in the record would not cause a reasonable judge to doubt the Defendant's competency to
14 accept a plea agreement.

16 Second, Defendant's "new" 1997 New Mexico state court decision is also
17 insufficient to merit reconsideration. Defendant argues that the psychiatric evaluation report was
18 flawed because it omitted that he was found incompetent to stand trial in 1997 and treated for
19 mental illness in 1998. Although Defendant's presentation of the actual court document may be
20 new, Defendant asserted this same argument in his § 2255 motion. The Court addressed the
21 argument in its prior Order, noting that Defendant reported to the examining psychologist his prior
22 condition and treatment related to these incidents. Thus, the examining psychologists were not
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25 ¹ The Court cannot consider *Dreyer* a change in the law considering the standard upon
26 which its holding relies was articulated over twenty years ago in *Chavez v. United States*, 656
F.2d 512 (9th Cir. 1981). Nonetheless, the Court addresses Defendant's arguments under
Dreyer.

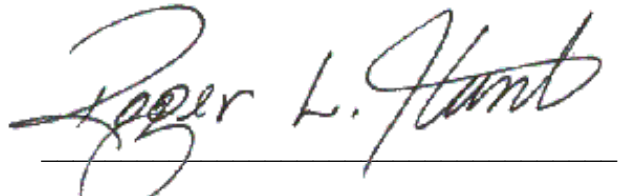
1 unaware of the Defendant's mental health history and any omission does not cast doubt on their
2 report as it related to Defendant's then-current mental state and competency.

3
4 **CONCLUSION**

5 Accordingly, and for good cause appearing,

6 IT IS HEREBY ORDERED that Defendant Falasha Ali's Motion to Set Aside
7 Court's Order/Judgment of (October 6, 2008) Pursuant to 60(b)(6) Motion Based on New
8 Intervening Change of Law and Newly Discovered Evidence (#119) is DENIED.

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10 Dated: July 31, 2013.

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13 **ROGER L. HUNT**
14 **United States District Judge**